

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7270

Joint Petition of Verizon New England)
Inc.,d/b/a Verizon Vermont, certain affiliates)
thereof, and FairPoint Communications, Inc. for)
approval of an asset transfer, acquisition of)
control by merger and associated transactions)

Docket No. 7540

Petition of Vermont Department of Public)
Service for an investigation and for an order)
directing Telephone Operating Company of)
Vermont LLC, d/b/a FairPoint Communications,)
to show cause why its Certificate of Public)
Good should not be revoked)

Order entered: 10/1/2009

PROCEDURAL ORDER AND
NOTICE OF WORKSHOP

On September 30, 2009, the Vermont Public Service Board ("Board") convened a status conference in these proceedings. As outlined in a Memorandum from the Clerk of the Board dated September 22, 2009, the Status Conference had four purposes:

1. Establishment of a Schedule for both Dockets;
2. Whether to continue the workshop process, and if so, in what form and in which docket;
3. Whether the Board should close Docket 7270, consolidate it with Docket 7540, or continue it as a separate proceeding; and

4. If Docket 7270 is maintained as a separate proceeding, whether there are particular issues that need to be resolved, or whether instead the docket should be used primarily to monitor compliance with conditions and other transition matters.

Workshops on Transition Issues

Since May 2008, the Board has been conducting monthly workshops to examine issues arising from the transition of service from Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), to Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint" or "Company"). All participants at the Status Conference agreed that the Board should discontinue the informal workshop process. They also agreed that, at the present time, the Board should not conduct additional workshops in either Docket.

The Board accepts these recommendations. The workshop tentatively scheduled for October 6, 2009, in Docket 7270 is, therefore, canceled; as discussed below, the Board will instead conduct a workshop on scoping issues in Docket 7540 at that time. Other than the scoping workshop, we will discontinue the process of informal workshops in both dockets. We also do not intend to schedule additional workshops, formal or informal, unless requested by the parties, and approved by the Board.

Termination of the informal workshops does, however, heighten the need for the Board to obtain regular information on FairPoint's progress toward resolving its service quality issues. FairPoint committed at the August 10, 2009, workshop to provide bi-weekly reports outlining the areas that had been affected by the transition and the cutover of systems from Verizon. FairPoint has still not provided this report, although it has apparently shared a template with the Department of Public Service ("Department"). This reporting mechanism is now even more important. The Board, therefore, directs FairPoint to provide the template to the Board as soon as possible. In addition, FairPoint shall begin filing reports within two weeks of this Order. The Board also requests that the Department continue to file Liberty Consulting Group's assessment of FairPoint's progress whenever those reports are generated (Liberty should continue to prepare at least one report per month).

Docket 7270

FairPoint recommended that the Board close Docket 7270 and address any remaining issues in either Docket 7540 or in separate dockets arising from compliance filings. Other participants recommended keeping Docket 7270 open for compliance issues, although without any specific current issues.

At this time, we have decided to keep Docket 7270 open for the purpose of addressing any further compliance issues. It will not be consolidated with Docket 7540. We will reevaluate this decision based upon the activity that occurs.

Schedule

The Department proposed a schedule in Docket 7540 for resolution of the issues raised by its petition and amended petition. Other participants generally agreed with the schedule, although FairPoint expressed some concern that, if the scope of the proceeding turned out broader than it anticipated, the Company may need additional time to present testimony.

We have adopted the Department's proposed schedule, with the addition of a workshop on October 6 at which we will consider the scope of issues to be addressed in Docket 7540. This will address the concern expressed by FairPoint in sufficient time for FairPoint to meet the November 3 deadline for filing testimony. The workshop will be held at the Public Service Board's Hearing Room, located on the 3rd Floor of the Chittenden Bank Building, at 112 State Street, in Montpelier, Vermont, commencing at 1:30 P.M.

October 5, 2009	Parties file proposals on scope of issues
October 6	Workshop on scoping issues
October 7	Motions for Intervention due
October 14	Responses to Motions for Intervention due
November 3	FairPoint files detailed testimony on its plans for its operations, management, systems, performance, procedures, and wholesale and retail consumer services to bring them to an acceptable level.

November 10	1st Round of Discovery on FairPoint
November 24	Responses by FairPoint to 1st Round of Discovery
December 8	2nd Round of Discovery on FairPoint
December 9	Public Hearing utilizing Vermont Interactive Television
December 22	Responses by FairPoint to 2nd Round of Discovery
January 8, 2010	Status Conference
January 15	Department and Intervenor's prefile testimony
January 22	1st Round of Discovery on DPS and Intervenor's
February 5	Responses to 1st Round of Discovery
February 12	2nd Round of Discovery on DPS and Intervenor's
February 24	Responses to 2nd Round of Discovery
March 10	FairPoint files prefiled surrebuttal testimony
March 15	1 Round of Discovery on FairPoint Surrebuttal
March 29	FairPoint responds to Discovery
Week of April 5th	Technical Hearings with live Sur-surrebuttal

All testimony must be filed with the Board in hard copy on the due date but electronic copies may be served on the parties with next day delivery of the hard copies. All discovery may be served on parties by electronic mail with hard copies to be mailed to the Board and all parties.

Statutory Basis for Proceeding

The Department originally filed its petition under 30 V.S.A. § 209. On September 18, 2009, the Department filed an amended petition that added Section 231 as a statutory basis. In the notice of the prehearing conference and of the status conference, the Clerk of the Board listed Sections 10 and 209 as the statutes under which the conferences were convened.

During the status conference, FairPoint raised some questions about the nature of this proceeding, whether there was any basis for revocation or modification of the Certificate of Public Good ("CPG"), and which party had the burden of proof. At this time, we do not have a request for a resolution of any of these issues. However, it is appropriate to eliminate any

ambiguity as to the statutory basis, so that FairPoint has notice of the proceeding. The Department styled its request as one requiring FairPoint to "show cause" why its CPG should not be revoked. We are treating this petition as a request for an investigation into FairPoint's performance which includes the question of whether the Board should revoke or modify FairPoint's CPG under Section 231(a). Should the Board find good cause for such an outcome, the Board may decide it appropriate to revoke or modify FairPoint's CPG.¹

SO ORDERED.

Dated at Montpelier, Vermont, this 1st day of October, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 1, 2009

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

1. The Board has previously addressed the question of what constitutes "good cause" under Section 231. See *Investigation into Citizens Utilities Company*, Dockets 5841/5859, Order of 6/16/97 at 280–283 (and cases cited therein).